IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 5018 of 1998

Between:

Smt. S.Umadevi, W/o. Narayana Rao,
Hindu, aged 49 years, Junior Assistant,

K.T.R.Women's College, Gudivada,
Krishna District.

..... PETITIONER

AND

1 The Commissioner of Collegiate Education, Government of

Andhra Pradesh,
Nampally, Hyderabad.
2 The Secretary & Correspondent, K.T.R. Women's College,
Gudivada, Krishna District.
3 The Principal, K.T.R. Women's College,
Gudivada, Krishna District.
4 Sri P.Pitcheswara Rao, Store-Keeper, K.T.R. Women's College,
Gudivada, Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring that the selection of the 4th Respondent as senior assistant by the departmental promotion committee as illegal, inoperative and contra to the regulations governing the promotions and is in violation of principles of natural justice and consequently direct the respondents herein to consider my case for appointment to the post of Senior Assistant in the existing vacancy with all consequential benefits.

Counsel for the Petitioner:MR.P.R.PRASAD

For Respondent No.1: GP FOR HIGHER EDUCATION

Counsel for respondent No.2: None appeared.
Counsel for respondent No.3: Mr.Vedula Venkat Ramana.
Counsel for the Respondent No.4: MR.N.RAMA MOHANA RAO

The Court made the following :

ORDER:

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This Writ Petition is filed seeking a Writ of Mandamus declaring that the selection of the 4th respondent as Senior Assistant by the Departmental Promotion Committee, which was constituted on 9-2-1998, as arbitrary, illegal and consequently direct the respondents 1 to 3 to consider the case of the petitioner for appointment to the post of Senior Assistant with all consequential benefits.

Few facts, which are not in dispute, are that the petitioner was initially appointed as Junior Assistant with effect from 1-7-1975. She is a graduate. The post held by her was admitted to grant-in-aid vide G.O.Ms.No 1155, dated 19-7-1977; whereas the 4th respondent was appointed initially as an Attendar in the second respondent-college. Subsequently, he was promoted as Store Keeper with effect from 1-7-1975. At that point of time, the post of Store Keeper was not equivalent to LDC. The post of Store Keeper carried lesser scale of pay in the pre-revised scale of pay of 1978. The post of Store Keeper was treated to be included in the cadre of Junior Assistant, Typist, Steno-typist and treated as single cadre for promotion to the post of Senior Assistant by maintaining a common seniority list. The Rules made by the Director of Higher Education under Section 99 of A.P. Education Act on 17-12-1983 deals with the method of recruitment to the post of Senior Assistant, which reads as under:

i. *Must have put in not less than 3 years of service of which 2 years are necessary in the category of Jr.Asst./typist/Steno-typist; and*

ii. *Must have passed Departmental Tests (i.e. Accounts Test for Sub-ordinate Officers Part-I & Dy.Inspector's Test)*

iii. *Typists/Steno-typists are not eligible for promotion or transfer before they are satisfactorily completed the period of probation in their respective categories.*

A detailed counter-affidavit has been filed by the respondents denying the allegations made by the petitioner. Further it was alleged that the petitioner was never qualified to hold the post of Senior Assistant since he had not passed the departmental test as required under the above said rule.

A reply-affidavit has been filed on behalf of the petitioner controverting the allegation that she did not qualify and eligible to be promoted as she did not pass requisite departmental test and the same is absolutely false. This averment was made only for the purpose of sustaining the illegal approval effected on 9-2-1998 promoting the 4th respondent to the post of Senior Assistant by the Departmental Promotion Committee. She further asserted that she had passed Accounts Test for Subordinate Officers in May, 1994 and D.I.T. part 1 and 2 in January,1992 and Part 3 in January,1993 and therefore, she is fully qualified and eligible for being promoted to the post of Senior Assistant and the Departmental Promotion Committee ignored this fact and her case was denied only to favour the fourth respondent.

Heard both the Counsel.

The learned Counsel for the 4th respondent though initially stated that the petitioner was not qualified for being considered to the post of Senior Assistant as required under the rules since she has not passed the departmental test as conceded to the reply-affidavit filed by the petitioner, asserting that she has passed the departmental test as early as in the year 1993 which was not taken into consideration by the Departmental Promotion Committee. However, he asserted that the respondent No.4 being appointed initially as an Attender and was promoted as a Record Assistant and further promoted with effect from 1-7-1975, as store keeper whereas the petitioner was promoted as LDC with effect from 1-7-1975. Therefore, considering the entire service rendered by him and the departmental test passed by him, the DPC which met on 9-2-1998, promoted the respondent No.4 to the post of Senior Assistant and the same cannot be found fault with.

I have given my anxious consideration. It is unfortunate that the Departmental Promotion Committee did not take into consideration the qualifications which were acquired by the petitioner for being promoted to the post of Senior Assistant as early as in January,1993 itself. Further, the petitioner was directly appointed as Junior Assistant as she was holding graduation qualification and both of them were appointed on 1-7-1975 i.e. the petitioner as LDC and the respondent No.4 as Store

Keeper. It is an admitted fact that as on 1-7-1975, the post of LDC and store-keeper was never treated as equivalent and the salary attached to the said post was also different.

The learned counsel for the 4th respondent also relied upon the seniority list purported to have been prepared by the department for the years 1997 and 1998. Though, the 4th respondent asserts that he was senior, there is no such indication in the said seniority list. On the other hand, the petitioner was shown in the first place among the Junior Assistants and the 4th respondent was shown in the first place among all the Store Keepers. Simply because the 4th respondent was appointed initially as an Attender, and thereafter, the said post was upgraded as Record Assistant and subsequently he was promoted as Store Keeper on the very same day, i.e., on 1-7-1975, on which date, the post of Junior Assistant and Store Keeper, admittedly were not treated equivalent. On the basis of total service respondent No.4 could not have been treated as Senior to the petitioner. In each cadre, particularly in the feeder post the seniority must be taken into consideration. Therefore, the 4th respondent cannot claim seniority over the petitioner who was appointed as Junior Assistant with effect from 1-7-1975 being a graduate.

Therefore, non consideration of the case of the petitioner by the Departmental Promotion Committee which was constituted on 9-2-1998 and denying her promotion to the post of Senior Assistant either on the basis of seniority or otherwise is arbitrary and illegal. Therefore, the promotion of the respondent No.4 to the post of Senior Assistant is declared as arbitrary and illegal. The respondents 1 to 3 are directed to consider the case of the petitioner for promotion to the post of Senior Assistant by constituting a fresh Departmental Promotion Committee along with others who were eligible as on 9-2-1998. The Departmental Promotion Committee shall be constituted within a period of two months from the date of receipt of this order and communicate the result to the petitioner within one week thereafter.

The Writ petition is accordingly allowed. No order as to costs.

12-10-2004

Stp

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the twelfth day of October, two thousand and four.

.ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Commissioner of Collegiate Education, Government of

Andhra Pradesh,
Nampally, Hyderabad.

2. The Secretary of Correspondent , KTR Women's College,

Gudivada Krishna District.

3. The Principal, KTR Women's College, Gudivada, Krishna District.

4 2CCs to G.P. for Education, High Court of A.P., Hyderabad (OUT).

5 2CD copies

THE HON'BLE MR JUSTICE C.V.RAMULU

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